

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**L-3 COMMUNICATIONS INTEGRATED  
SYSTEMS, LP<sup>1</sup>**

**Employer**

**and**

**Case 28-RC-6313**

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS & AEROSPACE WORKERS,  
LOCAL LODGE 933, AFL-CIO<sup>2</sup>**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

International Association of Machinists & Aerospace Workers, Local Lodge 933, AFL-CIO (Petitioner), seeks an election within a unit comprised of approximately 16 full-time and regular part-time field engineering technicians, team leaders, office clerical employees and administrative employees employed by L-3 Communications Integrated Systems, LP (Employer) at its facility located at Davis Monthan United States Air Force Base in Tucson, Arizona. The parties agree that the classifications of field service representatives (classified as senior field engineers I and senior field engineers II) should be excluded from the unit, as well as supervisors, managers, and guards as defined in the Act. Contrary to the Petitioner, the Employer argues that any unit found appropriate must also exclude three team leaders (classified by the Employer as field engineers II and referred to interchangeably as technician leads or team leaders), and a back shop supervisor (classified by the Employer as a field engineer II) on the basis that they are supervisors as defined in the Act. The Employer further opposes the inclusion of one employee who acts in a dual capacity as a field service representative and as a technician. Additionally, the Employer contends that an employee who is classified as an administrative/security assistant should be excluded from the unit as an office clerical employee or, in the alternative, a confidential employee. The unit proposed by the Employer would consist of about 10 employees.

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<sup>1</sup> The name of the Employer appears as corrected at the hearing.

<sup>2</sup> The name of the Petitioner appears as corrected at the hearing.

As explained more fully below, I conclude that the back shop supervisor and the three team-leaders are supervisors within the meaning of Section 2(11) of the Act, and, thus, should be excluded from the unit. I also find that Troy Jennings, a technician, is a dual-function employee who should be included in the unit on the basis of the amount of time he spends performing unit work. I conclude that Mary Duncan, the Administrative/Security Assistant, is an office clerical employee and should be excluded on that basis from the unit found appropriate herein.

## **DECISION**

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

**1. Hearing and Procedures:** The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

Post hearing briefs in this matter were due on September 28, 2004. On September 27, 2004, the Employer and the Petitioner submitted separate requests for an extension of time to file post-hearing briefs. On September 27, 2004, the undersigned granted the parties an extension of time to file their respective briefs by noon on October 1, 2004. On October 1, 2004, the Employer's brief, dated September 30, 2004, was received via Federal Express. On October 1, 2004, the Petitioner's brief was received via facsimile. On October 4, 2004, the Petitioner's brief, dated October 1, 2004, was received via regular U.S. mail. On October 4, 2004, the Employer filed a Motion to Strike Union's Post Hearing Brief, claiming the Petitioner improperly file its brief by facsimile on October 1, 2004, and untimely filed its brief by mail.

The Board's Rules and Regulations provide that the Board "may" reject a document not properly served on the parties, but the Board generally will not reject improperly served documents absent a showing of prejudice to a party. See *Sentry Parking, Inc.*, 327 NLRB 21 (1998). The Employer has not established that it was prejudiced by the untimely or improper service of the Petitioner's post-hearing brief. Accordingly, I deny the Employer's Motion to Strike.

**2. Jurisdiction:** At the hearing, the parties stipulated, and I find, that the Employer, L-3 Communications Integrated Systems, LP, a Delaware corporation, with an office and place of business in Tucson, Arizona, is engaged in providing intelligence, surveillance, and reconnaissance for the United States Air Force (USAF), and that during the 12-month period ending on September 2, 2004, the Employer in conducting its business described above, exerted a substantial impact on national defense. The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.

**3. Claim of Representation and Labor Organization Status:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

**4. Statutory Question:** As more fully set forth below, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

**5. Unit Finding:** There are four primary issues all raised by the Employer in this proceeding: 1) whether the back shop supervisor is a supervisor within the meaning of the Act, and thus should be excluded from the unit; 2) whether team leaders are supervisors within the meaning of the Act, and, thus, should be excluded from the unit; 3) whether a dual-function technician should be excluded from the unit; and, 4) whether its administrative/security assistant is an office clerical employee or, alternatively, a confidential employee who should be excluded from the unit. No other classifications are at issue.

For reasons discussed below, I find that the back shop supervisor and team leaders are supervisors within the meaning of the Act, the dual-function employee should be included in the unit, and the administrative/security assistant is an office clerical employee and should be excluded from the unit. There is no history of collective bargaining involving the employees in the petitioned-for unit.

To provide a context for my decision, I will first provide an overview of the Employer's operations, followed by a description of the positions in dispute, and their respective working conditions. I will then present the case law and the reasoning that support my conclusions on these issues.

#### **A. The Employer's Operations**

The Employer operates a repair facility that repairs, tests, and maintains communications and surveillance equipment used in U.S. military aircraft. There are two groups of employees at the Employer's facility. The parties agree that one group, composed of several field service representatives, should be excluded from the unit as they do not work at the facility but rather in the field and provide technical support, training and expertise to U.S. Air Force (USAF) personnel, via deployments with the USAF to various locations throughout the world. The second group of employees, which include the back shop and warehouse employees, maintain the warehouse and back shop operations and coordinate activities with Employer offices located in Waco and Greenville, Texas. The Employer also utilizes two individuals that work for the Employer's subcontractors: Tony Scaglione, who works for Raytheon, and David Brown, who works for BAE Systems. The parties agree that these two subcontractor employees should be excluded from the unit. The Employer employs a total of approximately 21 employees in all operations, including the two subcontractor employees.

The overall operations of the Employer are the responsibility of Site Manager Joe Dennis. Reporting directly to Dennis are Field Service Supervisor Richard Weldon, two logistics specialists, Mark Williams and Tom Azone, Administrative/Security Assistant Mary Duncan, and Back Shop Supervisor Robert Ramirez. In Dennis' absence, either Weldon or Ramirez serves as the site manager. Reporting to Field Service Supervisor Weldon are three field service representatives: Paul Freker, Derek Green, and Michael Hoffman. Reporting to

Back Shop Supervisor Ramirez are three team leaders: Robert McCormick, Ronald Grillo, and Steven VanVoorhis. In Ramirez' absence, a team leader acts as a back shop supervisor. Each team leader has three technicians reporting directly to him. Ed Matheson, John Tellup, and Jeffrey Mercer report to McCormick. Troy Jennings, Gary Hargis, and David Leahy report to Grillo. John Bennet, James Madison, and Ronald Wheeler report to VanVoorhis.

The Employer's facility is located at the Davis-Monthan Air Force Base in Tucson, Arizona. The back shop and offices are located inside a hanger, occupied by Dennis, Duncan, Ramirez, nine technicians, and various USAF personnel. The back shop, a secured area in which the technicians work, is separated by a hallway from the offices of Dennis, Duncan, and Ramirez. Duncan's desk is located immediately outside Dennis' office, in the same room as Ramirez' office. Tom Azone, a logistics specialist, has an office located in the rear of the back shop. The warehouse is located an unspecified distance from the hanger and is occupied by Logistics Specialist Mark Williams and USAF personnel.

All employees receive the same life insurance benefits, health, and welfare benefits, and a 401(k) retirement plan. The back shop operates on two shifts: a day shift from 6:00 a.m. to 4:00 p.m.; and a nightshift from 4:00 p.m. to midnight. For the period between midnight and 6:00 a.m. the Employer uses a standby roster to staff the back shop. As Ramirez works only during the day shift, a team leader acts as the back shop supervisor during the night shift on a monthly rotational basis. All technicians report their time to team leaders who in turn report their time to Ramirez. All technicians and team leaders use the same tools.

The Employer's business cycle begins when USAF personnel identify that a component, called a "box," on a military aircraft is malfunctioning. Logistics Specialist Williams transports the box to the back shop where his fellow logistics specialist, Azone, logs the arrival of the box. One of the team leaders (McCormick, VanVoorhis, or Grillo) assigns technicians to work on the box. The three teams each work on a different type of aircraft systems' equipment sometimes referred to as "blocks". McCormick's team specializes on block 30 systems, Grillo's team focuses on block 20 systems, and VanVoorhis' team specializes on high band systems. Team leaders assign the work to a technician who in turn tests and repairs the box or equipment. After the work is completed, the box is submitted to Azone who transports it to a warehouse.

## **B. The Employees in Dispute Whom the Employer Seeks to Exclude from the Unit**

### **(1) Back Shop Supervisor Ramirez**

The record evidence establishes that Back Shop Supervisor Ramirez oversees three team leaders and nine technicians, most of whom are former USAF personnel and highly skilled technicians. He trains back shop employees and ensures that all work is completed correctly. He is responsible for handling the information technology functions for the back shop and spends most of his time managing paperwork and back shop operations. Ramirez only works as a technician on an emergency basis. Although the record is not clear as to

what each classification's wage rate is, Ramirez' pay level is four percent higher than that of team leaders, who in turn earn higher wages than technicians.

Ramirez has not had the occasion to recommend the discipline or discharge of an employee, but has made recommendations regarding the hiring of new employees. Dennis has followed his recommendations. Ramirez conducts performance evaluations that are edited only for grammar by Dennis. These evaluations are used as a basis for merit increases and promotions.

Ramirez sets work priorities for team leaders and approves overtime without prior approval from Dennis. He can allow a team leader or technician to leave early, make up time, and grant paid time off. Ramirez attends weekly meetings with Site Manager Dennis, Field Service Representative Supervisor Weldon, and the three team leaders. He also records and reports the hours worked by all back shop employees.

## **(2) Team Leaders McCormick, Grillo, and VanVoorhis**

A team leader is assigned to one of three technician teams which are each comprised of three technicians. Team leaders determine the work priority for the boxes for their respective teams, assign work to technicians, conduct training for their respective teams, and assume the duties of the back shop supervisor during the night shift on a monthly rotational basis. Each team leader has additional duties. McCormick oversees the basic training and the scheduling of training. Grillo oversees the test equipment calibration requirements. VanVoorhis handles the hazardous material safety training program requirements. Although the record does not clearly indicate what wage each classification earns, Ramirez testified that team leaders earn a higher wage than technicians. Dennis testified that field engineers II (team leaders and back shop supervisors) earn about \$4000 to \$5000 more than field engineers I (technicians and logistics specialists.)

Team leaders have not had occasion to recommend the discipline or discharge of any employee. Team Leader McCormick and other team leaders have been involved in, and offered recommendations regarding, the hiring of new employees. Dennis has followed the team leaders' recommendations. Each team leader writes employee performance evaluations that are not reviewed by Dennis or Ramirez, but sent directly to the Employer's Human Resources Department in Waco, Texas. Evaluations are used to determine merit increases and promotions.

During times when emergency work is performed, team leaders approve overtime without obtaining prior approval. Team leaders have the authority to approve or reject technicians' requests for time off, and technicians notify team leaders when they are going to be absent or tardy. They attend the weekly supervisor meetings with Dennis, Weldon, and Ramirez.

### **(3) Dual-Function Employee Jennings**

Pursuant to the Employer's contract with the USAF, the Employer is required to be able to deploy eight qualified employees to work in the field. Earlier this year, the Employer added Troy Jennings, who normally serves as a technician at the facility, to the field service representative deployment rotations. Because the number of field service representatives is relatively small, and because the Employer is currently required to support two simultaneous overseas deployments, including one related to the war in Iraq, it needed more qualified employees for deployment. As a solution, technician Jennings was deployed to Kuwait for 60 days because of the long deployment rotation of field service representatives. He has only been deployed on this one occasion. As a prerequisite to deployment, Jennings had to be immunized, submit to a physical examination, and obtain a top-secret clearance. Other technicians do not have to meet these requirements. Jennings received a bonus in the form of hazard pay for being deployed and reported to Field Service Representative Supervisor Weldon while on deployment. When Jennings is not deployed, he reports to the back shop and is currently supervised by his team leader or Ramirez, and assumes all his regular duties as a technician. The testimony was unclear as to Jennings' specific title, but he serves as a technician.

### **(4) Administrative/Security Assistant Duncan**

Administrative/Security Assistant Mary Grace Duncan, whose office is located immediately outside of Site Manager Dennis' office, primarily works for Dennis, by assisting in administrative functions, helping Dennis compile budget information, coordinating employee pay issues, coordinating travel arrangements, and serving as the site security manager. Duncan's interaction with other back shop employees is limited to her sharing the same lunch/break room and the occasional filing of back shop documents for record keeping purposes.

Duncan works from 7:00 a.m. to 4:00 p.m. and is paid on an hourly basis. The record reflects that she routinely works with a computer, fax machine, printer, copier, and a telephone. As part of her basic duties, she files, types letters and emails, works the phones, mails expense reports for reimbursements, faxes letters, and makes copies, primarily in support of Dennis. She orders office supplies for herself and Dennis. She does not order parts for technicians. She is supervised solely by Dennis. There is no history of collective bargaining between the parties, and witnesses could only speculate as to Duncan's role as an employee who might assist and act in a confidential capacity to persons who would formulate, determine, and effectuate management policies in the field of labor relations. Duncan's job description does not shed light on whether she is a confidential employee.

### **C. Legal Analysis and Determination**

Section 2(11) of the Act defines the term "supervisor" as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall promote, discharge, assign,

reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

The possession of any one of these authorities is sufficient to deem the employee invested with such authority as a supervisor. *Allen Services Co.*, 314 NLRB 1060 (1994); *Big Rivers Electric Corp.*, 266 NLRB 380, 382 (1983). Persons with the power “effectively to recommend” the actions described in Section 2(11) are supervisors within the statutory definition. *Sun Refining & Marketing Co.*, 301 NLRB 642, 649-650 (1991); *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972). “Without question, an individual who can discipline employees or effectively recommend their discipline is a statutory supervisor.” *Tree-Free Fiber Co.*, 328 NLRB No. 51 slip op. at p. 4 (1999) (citing *Northcrest Nursing Home*, 313 NLRB 491, 497 (1993); *Superior Bakery*, 294 NLRB 256, 262 (1989). The burden of proving supervisory status is on the party that alleges that it exists. *St. Francis Medical Center West*, 323 NLRB 1046 (1997). Thus, the burden of establishing supervisory status lies with the Employer.

Although not dispositive of the issue of supervisory status, non-statutory indicia can be used as background evidence on the question of supervisory status. See *Training School of Vineland*, 332 NLRB No. 152 (2000), and *Chrome Deposit Corps.*, 323 NLRB 961, 963 fn. 9 (1997). As the Board has explained, nonstatutory indications of supervisory status (or “secondary indicia”), such as higher pay, supervisor to nonsupervisor ratios, or inclusion in supervisor meetings, may bolster evidence demonstrating that employees otherwise exercise one of the powers listed in the statute. See *Marian Manor for the Aged and Infirm*, 333 NLRB No. 133, (2001); cf. *Ken-Crest Services.*, 335 NLRB No. 63 (2001).

### **(1) Back Shop Supervisor is a Statutory Supervisor**

I find that Back Shop Supervisor Ramirez is a statutory supervisor based on his authority to effectively recommend the hiring of employees and conducting performance evaluations of three team leaders that are used to determine merit raises and promotions for team leaders. In addition, I find supervisory indicia in his authority to allow employees to leave early, work overtime, and to make up time, and his prioritizing the work assignments of the team leaders and technicians in the back shop.

With regard to secondary indicia of supervisory status, I rely on the fact that Ramirez is paid about four percent more than team leaders. The additional remuneration does not reward superior skill or training. Rather, Ramirez receives extra pay to perform supervisory duties. See *Essbar Equipment Co.*, 315 NLRB 461, 461(1994) (noting that an employee’s higher pay than subordinates supports the conclusion that he also exercised primary indicia of supervisory authority.) Additionally, Ramirez attends weekly supervisory meetings with Dennis, Weldon and the three team leaders. While the employee ratio, at first blush, appears to militate against finding Ramirez a statutory supervisor, given that the employees of the back shop are highly trained and skilled technicians and the work involved requires a high

level of technical expertise, a closer oversight of back shop employees is required. Finally, I note that Ramirez assumes responsibility for the facility in the absence of Site Manager Dennis and Field Service Representative Supervisor Weldon.

In sum, Ramirez possesses the necessary indicia of supervisory status, as set forth in Section 2(11) of the Act, that I shall exclude him from the unit found appropriate herein.

## **(2) Team Leaders are Statutory Supervisors**

Based on several factors, I find that team leaders are statutory supervisors. Team leaders have the authority to effectively recommend the hiring of employees, assign work to, and conduct performance evaluations on, each of the technicians assigned to their respective teams. The evaluations are sent directly to the Human Resources Department without change and are used to determine merit raises and promotions. Team leaders also authorize employees to leave work early, work overtime, and to make up time and prioritize the work assignments of the technicians on their respective teams.

Secondary indicia of supervisory authority also militates in favor of finding that team leaders are statutory supervisors. Team leaders are paid about \$4000 to \$5000 more than technicians. It appears once again that the additional remuneration does not reward superior skill or training, but is compensation for performance of supervisory duties. In such a case, supervisory status is likely. See *Essbar Equipment*, supra. Additionally, team leaders attend weekly supervisory meetings with Dennis, Weldon, and Ramirez. As note above, given that the employees of the back shop are highly trained and skilled technicians and the work involved requires a high level of technical expertise, a closer oversight of back shop employees is required. Thus, the supervisor-employee ratio does not militate against finding that team leaders are statutory supervisors. See *Marian Manor*, supra. Finally, I note that team leaders, on a monthly rotational basis, assume overall responsibility for the back shop during the night shift.

Accordingly, I shall exclude team leaders, whom I find are supervisors, from the unit found appropriate herein.

## **(3) Dual-function Employee Should be Included in the Unit**

Dual-function employees are employees who perform more than one function for the same employer. The Board summarized its analysis of dual-function employees in *Martin Enterprises*, 325 NLRB 714 (1998):

[d]ual-function employees, employees who perform more than one function for the same employer, may vote even though they spend less than a majority of their time on unit work, if they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they



have a substantial interest in working conditions in the unit. *Continental Cablevision*, 298 NLRB 973 (1990); *Alpha School Bus Co.*, 287 NLRB 698 (1987); *Oxford Chemicals*, 286 NLRB 187 (1987). [E]mployees devoting less than 50 percent of their time to unit work may have sufficient interest in the terms and conditions of employment to warrant their inclusion in the unit. *Avco Corp.*, 308 NLRB 1045 (1992); *Berea Publishing Co.*, 140 NLRB 516 (1963).

In determining whether dual-function employees regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in the unit's working conditions, the Board has no bright line rule as to the amount of time required to be spent performing unit work. Rather, the Board examines the facts in each particular case. See, e.g., *Oxford Chemicals*, supra (employee who regularly performed unit work for 25 percent of each working day was included in the unit); *Davis Transport*, 169 NLRB 557, 562-563 (1968) (employees who spent less than 3 percent of their time performing unit work during 10-month period were not included in the unit.)

Once an employee is determined to regularly perform a substantial amount of unit work, it is inappropriate to consider other aspects of the dual-function employee's terms and conditions of employment in a second-tier community-of-interest analysis. See *Oxford Chemicals*, supra (the Board, in determining that the dual-function employee was eligible to vote, overruled the administrative law judge's finding that the dual-function employee was ineligible based on four factors, including the employee's different hourly wage rate and insurance benefits, that the employee also performed clerical functions, and that the employee's work was less physically demanding than other unit employees); *Fleming Industries*, 282 NLRB 1030 fn. 1 (1987) (inclusion of a dual-function employee within a particular unit does not require a showing of community of interest factors in addition to the regular performance of a substantial amount of unit work.) The Board has recognized that even though dual-function employees may, in a particular case, possess less of a community of interest than other unit employees, "voter eligibility and unit placement do not turn only on maximizing homogeneity among unit employees." *Avco Corp.*, supra.

Based on several factors, I find that Troy Jennings should be included in the unit. Jennings has acted as a field service representative on deployment on one occasion for 60 days. While on deployment he reported to Weldon. The remainder of his work time has been spent as a technician in the back shop, where he reports to Team Leader Robert Grillo. He performs the same work as the technicians on his team. Jennings was deployed only because the Employer did not have a sufficient number of qualified employees available for deployment, due to the war in Iraq. Although Jennings has obtained additional employment qualifications, being deployed is not a routine part of his duties, and he is given no greater stature in the facility because he was deployed. Other technicians could seek the same deployment opportunity. Although it is unclear as to Jennings' exact job title, he performs the work of a technician. Based on the foregoing, Jennings has a substantial interest in the unit's working conditions, and I shall include him in the unit found appropriate herein.

**(4) Administrative/Security Clerk is an Office Clerical Employee Who Should be Excluded from the Unit**

Under the community of interest rule, the Board excludes office clerical employees from a production and maintenance unit. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127, 1129 (1971); *Westinghouse Electric Corp.*, 118 NLRB 1043 (1957). Plant clerical employees are included in production and maintenance units, because they generally share a community of interest with the employees in the unit. *Raytec Co.*, 228 NLRB 646 (1977); *Armour and Co.*, 119 NLRB 623 (1957). Typical plant clerical duties include “timecard collection, transcription of sales orders to forms to facilitate production, maintenance of inventories, and ordering supplies.” *Hamilton Halter Co.*, 270 NLRB 331 (1984). In contrast, the duties of office clerical employees include billing, payroll, phone, and mail. *Dunham’s Athleisure Corp.*, 311 NLRB 175 (1993); *Hamilton Halter Co.*, *supra*; *Mitchellace, Inc.*, 314 NLRB 536 (1994); *PECO Energy Co.*, 322 NLRB 1074 (1997) (public utility production & maintenance unit).

The Employer bears the burden of establishing its claim that Duncan should be excluded from the bargaining unit as an office clerical or confidential employee. See, e.g., *Queen Kapiolani Hotel*, 316 NLRB 655, 664-665 (1995) (party seeking to exclude an individual from voting for a collective-bargaining representative has burden of establishing that individual is ineligible to vote.) The Employer has presented insufficient evidence to make a determination as to whether Duncan is a confidential employee, but the evidence is sufficient to show that Duncan is an office clerical employee.

The work duties of Administrative/Security Assistant Duncan are ancillary to the administrative functions of assisting Site Manager Dennis. Duncan’s interaction with other back shop employees is very limited. She does not order parts or take orders for back shop employees. Duncan’s duties while in the back shop are dissimilar from the duties of the other back shop employees. She works primarily for, and reports directly to, Dennis, in an administrative support role. Her office is located immediately outside of Dennis’ office. Based primarily on her duties of filing, typing and mailing letters, answering phones, assisting Dennis in compiling the budget, coordinating travel arrangements, and working on payroll issues, I find that she performs the traditional work associated with that of an office clerical employee. *Mitchellace*, *supra*; *PECO Energy*, *supra*. Because the Board customarily excludes office clerical employees from production and maintenance units, I shall exclude Duncan from the unit found appropriate herein.

Based upon the foregoing, I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time Logistics Specialists, and Technicians, including dual-function

Technicians, employed by the Employer at its facility located at Davis-Monthan United States Air Force Base, Tucson, Arizona.

**EXCLUDED:** All Field Service Representatives, Team Leaders, the Back Shop Supervisor, office clerical employees, guards, and other supervisors as defined in the Act.

There are approximately 11 employees in the unit found appropriate.

The unit found appropriate is different than that sought by the Petitioner, and the record is unclear as to whether the Petitioner is willing to proceed to an election in an alternative unit. Inasmuch as I am directing an election in a unit smaller than the unit sought by the Petitioner, if it so desires, the Petitioner may withdraw its petition, without prejudice, upon written notice to the undersigned within ten (10) days from the date of this Decision and Direction of Election.

### **DIRECTION OF ELECTION**

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS & AEROSPACE WORKERS,  
LOCAL LODGE 933, AFL-CIO**

## **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the NLRB Regional Office, 2600 North Central Avenue, Suite 1800, Phoenix, Arizona, 85004-3099, on or before October 21, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

## **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by October 28, 2004. A copy of the request for review should also be served on the undersigned.

Dated at Phoenix, Arizona, this 14<sup>th</sup> day of October 2004.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director  
National Labor Relations Board - Region 28